

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: DATE FILED: 08/24/2022

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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NICOLE M. PROSA,	:	
	:	
Plaintiff,	:	21-CV-1313 (VEC)
	:	
-against-	:	<u>ORDER ADOPTING</u>
	:	<u>REPORT &</u>
COMMISSIONER OF SOCIAL SECURITY,	:	<u>RECOMMENDATION</u>
	:	
Defendant.	:	
-----X	:	

VALERIE CAPRONI, United States District Judge:

WHEREAS on February 13, 2021, Plaintiff Nicole M. Prosa filed a complaint against the Commissioner of Social Security seeking review of the Social Security Administration’s denial of her application for disability benefits, Dkt. 1;

WHEREAS on February 16, 2021, the Court referred this case to Magistrate Judge Fox for general pretrial management and for the preparation of reports and recommendations (“R&Rs”) on any dispositive motions, Dkt. 7;

WHEREAS on November 22, 2021, Plaintiff moved for a judgment on the pleadings, Dkt. 19;

WHEREAS on February 1, 2022, this case was re-assigned to Magistrate Judge Willis following Magistrate Judge Fox’s retirement;

WHEREAS on March 25, 2022, Defendant cross-moved for a judgment on the pleadings, Dkt. 28;

WHEREAS on August 5, 2022, Judge Willis entered an R&R, recommending that Plaintiff’s motion be granted, Defendants’ motion be denied, and that the case be remanded to the Social Security Administration for further proceedings, R&R, Dkt. 31 at 13;

WHEREAS in the R&R, Judge Willis notified the parties that, pursuant to 28 U.S.C. § 636(b)(1) and Fed. R. Civ. P. 72(b), they had fourteen days to object to the R&R's findings, *id.* at 14;

WHEREAS Judge Willis further noted that failure to object would result in both the waiver of objections and the preclusion of appellate review, *id.*;

WHEREAS neither party objected to the R&R;

WHEREAS in reviewing an R&R, a district court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge," 28 U.S.C. § 636(b)(1)(C);

WHEREAS when, as here, no party objects to the R&R, the Court may accept the R&R provided that "there is no clear error on the face of the record," *Heredia v. Doe*, 473 F. Supp. 2d 462, 463 (S.D.N.Y. 2007) (quoting *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)); *see also* Fed. R. Civ. P. 72(b) advisory committee's note;

WHEREAS an error is clear when the reviewing court is left with a "definite and firm conviction that a mistake has been committed," *see Cosme v. Henderson*, 287 F.3d 152, 158 (2d Cir. 2002) (quoting *McAllister v. United States*, 348 U.S. 19, 20 (1954)); and

WHEREAS careful review of the R&R reveals that there is no clear error;

IT IS HEREBY ORDERED that the R&R is adopted in full, Plaintiff's motion for judgment on the pleadings is GRANTED, Defendants' cross-motion for judgment on the pleadings is DENIED, and this case is REMANDED to the Social Security Administration for additional proceedings.

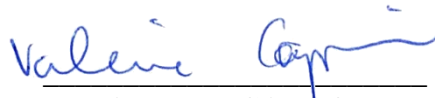
IT IS FURTHER ORDERED that because the R&R gave the parties adequate warning, *see* R&R at 14, the failure to object to the R&R precludes appellate review of this decision. *See*

Mario v. P & C Food Markets, Inc., 313 F.3d 758, 766 (2d Cir. 2002) (“Where parties receive clear notice of the consequences, failure timely to object to a magistrate’s report and recommendation operates as a waiver of further judicial review of the magistrate’s decision.”).

The Clerk of Court is respectfully directed to enter judgment for the Plaintiff and to remand this matter to the Social Security Administration. The Clerk is further directed to terminate all open motions and to close this case.

SO ORDERED.

Date: August 24, 2022
New York, New York


VALERIE CAPRONI
United States District Judge